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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/719,321  
Filing Date: November 21, 2003  
Appellant: Dennis Osamu Hirotsu

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Jason J. Camp  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed April 7, 2008 and amended brief of May 7, 2008, appealing from the Office action mailed September 7, 2007.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The statement of related appeals and interferences contained in the brief is correct.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The statement of the status of amendments contained in the brief is correct. All amendments, including the Amendment After Final filed January 7, 2008, have been entered.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct. The Examiner notes that the double patenting rejections have not been appealed.

### **(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

### **(8) Evidence Relied Upon**

6,318,555	KUSKE et al.	11-2001
5,897,542	LASH et al.	4-1999
6,454,095	BRISEBOIS et al.	9-2002
Des. 312,208	SORKIN	11-1990
5,865,322	MILLER	2-1999
3,306,437	NELSON	7-1965

### **(9) Grounds of Rejection**

The following grounds of rejection are applicable to the appealed claims:

Claims 1-3 and 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuske (US Patent No. 6,318,555) in view of Lash (U.S. Patent No. 5,897,542) and further in view of Brisebois (U.S. Patent No. 6,454,095).

For Claim 1, Kuske teaches a package for sanitary napkins products, the package including at least one window, an outer surface, and a plurality of sanitary napkins contained in the package, with the sanitary napkins being seen through the window (window includes window 88, visual cue 96, and accessory window 98; Kuske

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expressly teaches that window 88 and visual cue 96 may be continuous with each other; Kuske also teaches a wraparound window 106 which continuously wraps around four walls of bag 50; Kuske teaches that all of bag 50 may be made of a clear material; Figs. 1-12, col. 2, lines 40-48, col. 5, line 21 to col. 7, line 67, Claims 1-4, 12-13, and 15). Kuske does not expressly teach the package including at least two different types of sanitary napkins, nor the sanitary napkins being individually wrapped with the types of sanitary napkins being identified by an indication means disposed on the respective wrappers. Lash teaches a package for absorbent articles, with the absorbent articles being articles which absorb and contain body exudates, and are placed against the body of the wearer to absorb and contain the exudates (Figs. 1-2, Abstract, col. 1, line 65 to col. 2, line 46). Lash teaches the package including a plurality of disposable absorbent articles contained in the package, the plurality of disposable absorbent articles including at least two different types of absorbent articles having different physical properties or structures (Figs. 1-2, col. 1, line 65 to col. 2, line 6, col. 4, lines 30-32, col. 8, line 59 to col. 10, line 17, Claim 1). Having a type indication means disposed on the respective absorbent articles is considered by the Examiner to be inherent in Lash, as the invention disclosed by Lash would not function as described without some means of distinguishing the first and second article types. Note that a difference in size or thickness between the two types would be an indication means; Lash teaches the first and second article types differing in absorbent capacity, with the greater capacity articles being used overnight when greater capacity is required (Abstract, col. 1, line 65 to col. 2, line 6, col. 8, line 59 to col. 9, line 58). This would not

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be possible if the two types could not be distinguished by the user. Lash teaches that multiple types in a single package provide convenience (col. 9, lines 47-49). Given that Lash teaches the absorbent articles being articles which absorb and contain body exudates and are placed against the body of the wearer to absorb and contain the exudates, and sanitary napkins are absorbent articles which absorb and contain body exudates and are placed against the body of the wearer to absorb and contain the exudates, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Kuske for the package to include at least two types of absorbent articles, as taught by Lash, to provide convenience, as taught by Lash. Brisebois teaches packaging of individually wrapped sanitary napkins in a package (package includes receptacle 102, which holds a plurality of individually wrapped sanitary napkins 206; Figs. 1-3, col. 3, lines 28-59, col. 5, lines 14-28). Brisebois teaches wrapping of sanitary napkins identified by an indication means disposed on the respective wrappers (individual wrapper includes pouch 310; Fig. 3, col. 5, line 14 to col. 6, line 61). Brisebois teaches the indication means including lines, patterns, ornamental designs, symbols and/or characters (Figs. 1-11, col. 3, lines 1-27, col. 6, lines 1-10 and 51-61). Brisebois teaches lines, patterns, ornamental designs, symbols and/or characters providing information about the physical characteristics or structure of the absorbent articles in a way that is visually noticeable, readily visible and understandable to the user (col. 3, lines 1-27, col. 6, lines 1-67). In light of Brisebois' teaching of packaging individually wrapped sanitary napkins in a package and of indication means disposed on the individual wrappers, it would have been obvious to one of ordinary skill in the art to

modify Kuske for the sanitary napkins to be individually wrapped, and to be identified by an indication means disposed on the respective wrappers, with the indication means including lines, patterns, ornamental designs, symbols and/or characters, as taught by Brisebois, to provide information about the article in a way that is visually noticeable, readily visible and understandable to the user, as taught by Brisebois. All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385 (U.S. 2007).

For Claim 2, Kuske does not teach the at least two different types of sanitary napkins being defined by the absorbent capacity of the sanitary napkins, the kind of the sanitary napkins, or the dimension of the sanitary napkins. Lash teaches at least two different types of absorbent articles being defined by the absorbent capacity, the kind, or the dimension of the article (col. 1, line 65 to col. 2, line 6, col. 8, line 59 to col. 9, line 59). It would have been obvious to one of ordinary skill in the art to modify Kuske to include the at least two different types of sanitary napkins being defined by the absorbent capacity, the kind, or the dimension of the absorbent article, as taught by Lash, for the same reasons as described above for Claim 1.

For Claim 3, Kuske teaches the window having a size large enough so that at least 30% of the contained individually wrapped sanitary napkins can be seen through the window (Figs. 1-12, col. 5, line 22 to col. 7, line 67, and Claims 1-4, 12-13, and 15;

note that all of the bag 50 may be clear or the window 106 may wrap around all four walls of the package so that most or all of the articles are visible, as described in col. 7, lines 40-67; note that the one of the functions of the window is to serve as a product-remaining indicator or gauge, so that a caregiver can determine the number of articles remaining, as described in col. 6, lines 65-67, and col. 7, lines 64-65).

For Claim 5, Kuske teaches the package having an opening device which has a size large enough so that the sanitary napkins can be picked up by the user through the opening device (opening 76, Figs. 3 and 10, col. 4, lines 37-58, col. 5, lines 8-20). Kuske does not expressly teach different types of sanitary napkins being picked up by the user through the opening device. However, picking up sanitary napkins through an opening device is well known in the art. Lash confirms this and teaches a package having an opening device so that different types of absorbent articles can be picked up by the user through the opening device (opening device 225, Fig. 2 and col. 9, line 47 to col. 10, line 2). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Kuske to include different types of absorbent articles being picked up by the user through the opening device, as taught by Lash, for the same reasons as described above for Claim 1.

For Claim 6, Kuske teaches the package having a front panel, a rear panel opposed to the front panel, side panels which connect the front and rear panels, and a top panel which connects the front, rear, and side panels (Figs. 3 and 5-12, col. 3, line 57 to col. 4, line 36). Kuske teaches the window being formed on the front panel (Figs. 3, 5-12, col. 5, line 21 to col. 7, line 67). Kuske teaches the opening device being



formed on the top panel (Fig. 10, col. 4, lines 37-58, col. 5, lines 8-20; note that the package can be used in more than one orientation).

For Claim 7, Kuske teaches the window being formed by differentiating the translucency or the transparency at the window from the area surrounding the window (Figs. 3, 8-9, and 11, col. 5, line 21 to col. 7, line 67).

#### **(10) Response to Argument**

Appellant argues that Kuske does not recognize the problem consumers have in consuming different types of absorbent articles in a single package equally, nor the problem of identifying different types of articles contained in a single package at the point of sale. However, the relevant question here is whether or not motivation is present for combining the references. Lash teaches packaging of absorbent articles in a package, and teaches that a variety of different packages are suitable (Abstract, Fig. 2, col. 1, line 65 to col. 2, line 6, col. 9, line 56 to col. 10, line 17). Brisebois teaches packaging of absorbent articles such as sanitary napkins in a package, and teaches that a variety of different packages are suitable (Abstract, Figs. 1-2 and 8-10, col. 1, lines 6-17, col. 2, lines 50-61 col. 3, lines 27-65, col. 5, lines 14-28). The Kuske bag is a known type of package for packaging absorbent articles (Figs. 3, 5-12, col. 2, lines 40-56, col. 3, line 57 to col. 4, line 36, col. 7, lines 1-67). Given Kuske's teaching of a package for absorbent articles, it would have been obvious to one of ordinary skill in the art to modify Kuske to package the types of absorbent articles disclosed by Lash and Brisebois.

Appellant argues that Kuske specifically teaches a visual display feature that is intended to frame a graphic on the absorbent article, with the visual display feature located on the end panel of the packaging bag. Appellant further argues that although Kuske discloses packages with more than one window, only the front panel is designed to frame the graphic on the absorbent article; therefore, even if the absorbent articles of Lash were placed in the package of Kuske, only the graphics of one type of the absorbent articles of Lash would be visible through Kuske's visual display feature. However, Kuske teaches that the various windows may wrap continuously around all four walls of the bag 50 (wraparound window 106, Figs. 11-12, col. 7, lines 57-67). Kuske teaches that accessory window 98 may extend to both ends of top wall 56 of bag 50 (Figs. 3 and 8-9, col. 7, lines 36-39). Kuske also teaches that the entire bag 50 may be substantially clear or transparent, so that most or all of the articles are visible (col. 7, lines 41-47; the window therefore includes the entire bag). Kuske teaches that the accessory window 98, wraparound window 106, or other windows allow the user to determine the number of articles left in the bag; this would require most or all of the articles to be visible through the window or windows (col. 6, lines 65-67, col. 7, lines 19-24 and 64-65, Claims 1 and 12). Any visible differences which the types of articles disclosed in Lash might have, such as a difference in thickness between articles of different absorbencies meant for daytime and overnight use, would be expected to be visible through the windows of the Kuske package (Lash, Fig. 2, col. 8, line 59 to col. 9, line 65).

Appellant argues that Lash does not teach or suggest sanitary napkins. Lash teaches a variety of absorbent articles which absorb and contain body exudates and are placed against the body of the wearer to absorb and contain exudates discharged from the body (col. 2, lines 28-46). Sanitary napkins are well known as absorbent articles which are placed against the body of the wearer to absorb and contain exudates discharged from the body. Lash therefore reasonably suggests sanitary napkins.

Appellant argues that Brisebois does not teach or suggest placing different types of sanitary napkins in a single package, and that therefore only the element of information of one type of sanitary napkin of Brisebois would be visible through the visual display feature of Kuske. Brisebois is cited by the Examiner for its teaching of individual wrappers for sanitary napkins with an indication means on the wrapper identifying the type of sanitary napkin, rather than for the claim limitation of placing different types of sanitary napkins in a single package (Figs. 1-3, col. 5, line 14 to col. 6, line 61). Lash, rather than Brisebois, is cited for the claim limitation of placing different types of sanitary napkins in a single package, as described above for Claim 1. All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385 (U.S. 2007).

Although not necessary for the above arguments, note that the packaging of different article types together and the placing of colors and other indication means on

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article wrappers are well known in the packaging art. U.S. Design Patent No. 312,208 to Sorkin teaches absorbent articles of six different colors packaged together in a package with a transparent top wall through which all the articles are visible (Description and Figs. 1-2 and 4-5; colors are indicated by different shading in Figs. 2, 4, and 5). U.S. Patent No. 5,865,322 to Miller teaches a device which holds a variety of absorbent articles of various types and absorbencies, including sanitary napkins, each of which may be individually wrapped; the Miller device has window openings through which the articles are visible (Abstract, Figure, col. 2, line 53 to col. 4, line 34, Claims 1 and 7). U.S. Patent No. 3,306,437 to Nelson teaches a receptacle having a window opening, and color coding of wrappers holding different article types within the receptacle and visible to be selected through the opening (Figs. 1-5, col. 1, line 58 to col. 2, line 36, col. 3, line 41 to col. 4, line 63).

#### **(11) Related Proceeding(s) Appendix**

No decision has yet been rendered by a court or the Board in the appeal identified by the Applicant in the Related Appeals and Interferences section of the appeal brief.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Paula Craig

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